UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8

CONAGRA FOODS REFRIGERATED FOODS CO., INC.[1]

Employer

and **Case No. 8-RC-16604-1**

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 1059, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.[2]

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> ***All electricians and mechanics of the Employer at its facility located at 17739 State Route 231, Nevada, Ohio, the sole facility involved herein, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act and all other employees.***

[1] At the hearing, the Petitioner moved to amend the name of the Employer because the Employer referred to itself by this name in its Motion to Dismiss. Based on the Employer's representation, the case caption has been amended.

[2] The Petitioner waived the filing of a brief in this matter. The Employer did not appear at the hearing and therefore presented no evidence. Upon the entire record in this proceeding, the undersigned

There are approximately 13 employees in the unit found to be appropriate.

JURISDICTION

The Employer is engaged in the processing of ham and other food items at its Nevada, Ohio facility. I find that the Employer is engaged in commerce within the meaning of Section 2(6) and 2(7) of the Act.

In making this finding, I note that the Employer, although duly served with the Notice of Hearing, failed to appear at the hearing held on Monday, March 15, 2004 in Cleveland, Ohio. The record reveals that on Friday, March 12, 2004, the Employer's attorney informed the Petitioner's attorney that no one from the Employer was going to attend the hearing.

Under these circumstances, it is appropriate to rely on the Board's decision in **Tropicana Products, Inc. 122 NLRB 121 (1958),** which held that the Board will assert jurisdiction if there is evidence of statutory jurisdiction without regard to whether any specific jurisdictional standard is shown to be satisfied. In the first instance, the Board has asserted jurisdiction over Conagra, Inc. in several cases. **Conagra, Inc., 321 NLRB 944 (1996)** and **Conagra, Inc., 248 NLRB 609 (1980).**

Additionally, in the closure announcement attached to its Motion to Dismiss the Employer refers to itself as "Conagra Foods". I take administrative notice of the fact that the www.Conagrafoods.com website indicates that the Conagra Foods Refrigerated Foods Group is based in Omaha, Nebraska and produces and markets food products under such well known trade names as Armour, Butterball, Healthy Choice and Eckrich.

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finds the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

The evidence in this record reflects that in 2003 Conagra Foods, Inc. had a net income of over $774 million and employed 63,000 employees. Notwithstanding the Petitioner's failure to produce a witness to testify regarding the operation of the Employer's Nevada, Ohio facility, I am satisfied that the Employer is in interstate commerce and that the Board has statutory jurisdiction. In so finding, I note that the Employer distributes its products nationally and that the announcement attached to its Motion to Dismiss the Petition reflects that it intends to consolidate the Nevada, Ohio operation with its facility in Mason City, Iowa. To further investigate the jurisdictional aspects of this case would reward the Employer for failing to attend the hearing. Such a result would be contrary to the principles of Tropicana, which indicate that time is of the essence in representation proceedings if Board processes are to be effective. This is particularly so in the instant case where there is even greater urgency in resolving this matter because of the Employer's claimed decision to close the facility at some point later in the year.

Accordingly, under these circumstances, I find that it effectuates the purposes of the Act to assert jurisdiction in this case. Since the labor organization involved claims to represent certain employees of the Employer, a question affecting commerce exists with the meaning of Section 9(c)(1) and 2(6) and (7) of the Act.

MOTION TO DISMISS

On March 12, 2004, the Employer filed a Motion to Dismiss the Petition based on its assertion that a decision has been made to close the Nevada, Ohio facility sometime during the third calendar quarter of 2004. In support of its Motion, the Employer provided a copy of a speech it claims to have been delivered to the Nevada, Ohio

employees on March 12, 2004. No additional documents or evidence were submitted in support of the Motion.

The Employer's Motion to Dismiss is denied. The Board has held that if an employer's closure is definite and imminent, the Board will not conduct an election. The standard the Board applies in such cases, however, is a stringent one. In **Martin Marietta Aluminum, Inc., 214 NLRB 646 (1974)**, the employer demonstrated that it was in the process of closing the plant, there was a substantial reduction in employee complement, and a date certain when the remaining employees would be terminated. In that case, the Employer demonstrated its unsuccessful efforts to find a purchaser, as well as its efforts to inform both employees and the public regarding the estimated date of closure. Under those circumstances, the Board found that in view of the imminent closure of the plant, no useful purpose would be served by coordinating an election.

In the instant case, the Employer has failed to provide sufficient evidence to show that the closure of the Nevada facility is imminent and certain. While a script of the announcement to employees regarding the closure was submitted, the record contains no documentation to show what specific measures have been taken to close the facility. Importantly, there is no date certain given for the closure. Under these circumstances, I find the Employer's announced closure of this facility is too speculative a basis to bar an election. See **Canterbury of Puerto Rico, Inc., 225 NLRB 309 (1976), Gibson Electric, Inc., 226 NLRB 1063 (1976).** Accordingly, I find that there is insufficient evidence to warrant the dismissal of the petition.

THE APPROPRIATE UNIT

The Act requires that a petitioner seek only an appropriate unit and not the most appropriate or optimum unit. **Overnite Transportation Co., 322 NLRB 723 (1996); Morand Brothers Beverage Co., 91 NLRB 409 (1950), enfd. 190 F,2d 576 (7th Cir. 1959).** The Board considers the petitioner's request concerning the composition of the unit and gives it relevant consideration. **Overnite Transportation Co., supra at 723**. As the Board notes, "[i]t is well-settled then that there is more than one way in which employees of a given employer may be appropriately grouped for collective bargaining." **Id., at 723-724**. Accordingly, a petitioner is not compelled to seek a more expansive appropriate unit if a narrower unit that is seeks is also appropriate.

The petitioned-for unit includes all electricians and mechanics of the Employer at its Nevada, Ohio facility. There is no history of collective bargaining at that facility. The Board has found that in the absence of a history of bargaining on a more comprehensive basis, maintenance employees may constitute a separate appropriate unit because of the distinct interests such employees possess. **Harrah's Club, 187 NLRB 810, 813 (1971); Heublein, Inc., 119 NLRB 1337 (1958)**. Without any evidence to establish that there is sufficient interchange or common supervision with production employees to overcome such distinct interests, I find that the petitioned for unit is an appropriate unit for the purposes of collective bargaining and accordingly shall direct an election.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending

immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by United Food and Commercial Workers Union, Local 1059, AFL-CIO.

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. **Excelsior Underwear Inc.**, **156 NLRB 1236 (1966)**; **N.L.R.B. v. Wyman-Gordon Co., 394 U.S. 759 (1969)**. Accordingly, it is directed that an eligibility list containing the ***full*** names and addresses of all the eligible voters must be filed by the

Employer with the Regional Director within 7 days from the date of this decision. **North Macon Health Care Facility, 315 NLRB 359 (1994)**. The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, by April 15, 2004.

Dated at Cleveland, Ohio this 1st day of April 2004.

/s/ [Frederick J. Calatrello]

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

460-7550-8700